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IN THE

Supreme Court of the United States

OCTOBER TERM 1956

No. 918

BREWERY & BEVERAGE DRIVERS, WAREHOUSEMEN & HELPERS UNION, LOCAL No. 993, JOSEPH A. WAGNER AND WADE RUSSELL,

Petitioners,

vs.

McLEAN DISTRIBUTING COMPANY, INC.,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Minnesota

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The only new matters in respondent's brief are found at page 22. Petitioners' answer to these new matters are as follows:

1. There is no evidence in the present controversy of reprisals, threats of reprisals, violence or the like. The trial

court in this case did not find any evidence of reprisals or threats of reprisals (T. 24-27), and the Minnesota Supreme Court, as respondent admits, did not directly or impliedly make any holding on the basis of reprisals or threats of reprisals. Our case is therefore similar to *Hotel Employees Union, Local No. 255 v. Sax Enterprises, Inc.*, — U.S. —, 3 L. Ed. 2d 289 (1959), in which this Court decided the case on the merits notwithstanding an allegation of violence in the state trial court.

2. The present controversy is not moot because:

(a) The petitioning union claims that it is entitled to strike to obtain a separate bargaining unit and that the National Labor Relations Board has exclusive authority to determine that question. But the state court held that it had the power to determine that issue. The question of the Minnesota Supreme Court's power to so declare is independent of the contract and is not moot.

(b) The status of the former employees of respondent who were discharged by it by reason of this strike is dependent upon determination of the state court's power to act in the instant case.

(c) Minn. Stat. § 585.04 requires a bond for damages to the party enjoined if the court finally determines that the temporary injunction should not have been issued. Such damages include monetary loss and attorneys' fees. *Detroit Lakes Realty Co. v. McKenzie*, 204 Minn. 490, 284 N.W. 60 (1939). Petitioners' right to recover those items of damage are dependent upon the outcome of this case. This is therefore a continuing controversy. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 459 (1957) (case not moot because of possible monetary loss); *Springstead v. Crawfordsville*

State Bank, 231 U.S. 541, 542 (1913) (attorneys' fees considered as monetary loss).

(d) Any wrongful discharge action at common law by members of the petitioning union will hinge on the state court's power to act in the present case.

3. The issue of stranger picketing is not in the present controversy since neither the trial court nor the Minnesota Supreme Court mentioned the presence of same.

Respectfully submitted,

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